

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 203
3017796

BETWEEN EUGENE JOHN DeMARCO
 Applicant

AND THE VINTAGE AVIATOR
 LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Sara Cameron, counsel for Applicant
 Steph Dyhrberg, counsel for Respondent

Investigation Meeting: On the papers

Determination: 20 May 2020

**DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

[1] On 9 October 2017 I issued a determination addressing various interim orders sought by the applicant prior to consideration of his substantive grievances which, at the time, alleged various disadvantages.¹ Mr DeMarco was then still employed.

[2] One of the issues was an application the respondent (TVAL) be prohibited from advancing a disciplinary investigation which was successful, largely because TVAL's inquiry covered issues which were also being investigated by the Serious Fraud Office. Pertinent to this determination, I also issued an order temporarily prohibiting publication of ... *the pleadings filed in the Authority, any and all documents filed with the pleadings, the information contained within those documents and anything which may lead to the identification of the parties.*

¹ *JKL v OPQ Limited* [2017] NZERA Wellington 102

[3] The rationale was that:

... the accusations are such that notwithstanding the fact they are yet to be proven their very existence may well adversely affect the Applicant and his future endeavours. He is, in my view, entitled to be protected from that at least until there is evidence the allegations have substance. Finally I note there are issues about the health of family members and the effect these allegations may have on them. Again they are entitled to protection until such time as the allegations may be found to have substance.

[4] At the time of issue the order had a short duration which led to subsequent extensions.² The second of those determinations also considered the extent to which TVAL should be precluded from investigating a further list of concerns. It was permitted to pursue some which led to Mr DeMarco's dismissal. While it was said the dismissal would be challenged that has not occurred as far as the Authority is concerned.

[5] A final extension occurred on 9 May 2018.³ While still temporary it was open ended as by then the Serious Fraud Office had pressed charges and the District Court had also made non-publication orders. To lift my order would undermine the Court's.

[6] As events transpired Mr DeMarco was found guilty of various offences and imprisoned. That also saw the non-publication orders lifted and both the issues and the party's identity received widespread publicity. That completely nullified the rationale upon which my orders were granted and renders them nugatory.

[7] I therefore advised the parties that in the absence of a contrary argument on or before Friday 15 May 2020 I would lift my order and with the exception of any issue as to costs, which were previously reserved, close the file. There has been no such argument and therefore my non-publication order no longer has effect.

[8] JKL can be identified as Eugene DeMarco and OPQ Limited as The Vintage Aviator.

Michael Loftus
Member of the Employment Relations Authority

² *JKL v OPQ Limited* [2018] NZERA Wellington 3; [2018] NZERA Wellington 11 and [2018] NZERA Wellington 29

³ *JKL v OPQ Limited* [2018] NZERA Wellington 38